IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.2 OF 2007
Along with
Civil Application No.193 of 2007

1. Shri Chunnilal Nagardas Shah,
since deceased, through his LRs:

1A. Smt Bhabi Chunnilal Nagardas
Shah and ors. .. Appellants.

Vs

1.Shri Jagannath Krishna lokare
and ors. .. Respondents.

Mr Umesh Mankapure, for the appellants.
Mr R.N.Kachare, for respondent nos. 1 to 3.

CORAM : D.B.BHOSALE,J.
DATE : 20.02.2007

PC:

1. Heard the learned counsel for the parties.

2. The appellants have challenged the concurrent findings recorded by the courts below, by which a suit filed by the respondents-plaintiffs, stands decreed. The suit was filed for possession. Only two points were framed by the first appeal court for determination, namely, whether the appellants prove that before filing the suit it was necessary to obtain an order of cancellation of the certificate under section 32-M of B.T.& A.L. Act, which had already been issued in favour

of the appellants-tenants, and whether the suit was bad for want of notice under section 106 of the Transfer of Property Act. Both the points were answered in negative by the first appeal court. Mr.Mankapure, learned counsel for the appellants, besides these two points, also contended that after expiry of the registered lease, the appellant was a tenant holding over and, therefore, the suit for ejectment without notice was not maintainable. He further submitted that in view of dismissal of the earlier suit for possession instituted by the respondents-plaintiffs, the present suit was not maintainable.

3. Insofar as the first point is concerned, it is clear that 32-M certificate was issued on the basis of the order passed under section 32G of B.T. and A.L.Act. There is no dispute that the order under section 32-G was ultimately quashed and set aside in the revision by the MRT holding that the provisions of section 32-G were not attracted.In view thereof, in my opinion,and for the reasons recorded in paragraph 9 of the appellate court judgment, the issue has rightly been answered in negative. Insofar as the next contention that the suit was bad for want of notice under section 106 is concerned, it is clear from the facts that the period of registered lease deed got over in 1978 and in view

thereof the appeal court has rightly answered the issue in negative for the reasons recorded in paragraphs 5 and 6 of the judgment. Moreover, the tenancy in the present case was terminated under section 111(a) of the Transfer of Property Act. Insofar as the next contention of Mr Mankapure, learned counsel for the appellants, that the suit itself was not maintainable in view of dismissal of the earlier suit is concerned, such point was not raised before the courts below. It is evident from the issues framed by the courts below as also the arguments quoted in the judgments, that no such ground was either raised in the memo of appeal before the first appeal court or before this court. The appellants have also not stated that such point was argued but was not considered. Similarly, the case, as tenant holding over, was also not pleaded either in the pleadings or before the courts below. These being the mixed questions of law and facts cannot be allowed to be raised for the first time in the second appeal. No substantial question of law, in my opinion, is either raised or involved in the appeal. I find no reason to interfere with the findings recorded by the courts below. In the circumstances, the second appeal is dismissed in limini. As a consequence thereof, the civil application for interim relief also stands rejected.

(D.B.BHOSALE,J.)